IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5-10-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.24153 of 2007
and
M.P.Nos.1 and 2 of 2007

D.R.P.Sundharam .. Petitioner

Vs.

Canara Bank,
rep. by its Executive Director,
Industrial Relations Section,
Personnel Wing,
112, J.C. Road,
Bangalore 560 002. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the charge sheet issued by the respondent in proceedings No.REF:IRS:DP:CBEO:CS-14/2007dated 28.6.2007, quash the same and consequently direct the respondent to disburse all retirement benefits with interest for the delayed period as well as regularise the period of suspension and pay the full pay and allowances with all fringe benefits in respect of the said period of suspension.

For Petitioner : Mr.Vijay Narayan, S.C.
For Mr.P.Nehru

For Respondent : Mr.P.R.Raman

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O R D E R

The petitioner has come forward with the present Writ Petition challenging the charge memo issued by the respondent in his proceedings dated 28.6.2007, for quashing the same, and consequently directing the respondent to disburse all retirement benefits with interest for the delayed period as well as regularise the period of suspension and pay full pay and allowances with all benefits.

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2. The facts which are necessary for the disposal of the present Writ Petition are as follows:-

(a) The petitioner had joined the service of the Canara Bank as Officer on Contract on 6.4.1970 and thereafter promoted as Deputy General Manager in the respondent-bank. In December 2004, the respondent issued a memorandum to the petitioner in respect of certain minor irregularities said to have occurred while the petitioner was working as Assistant General Manager in the Regional Office of the bank at Coimbatore. The petitioner immediately submitted his explanation on 22.12.2004 followed by a further letter dated 15.4.2005. Thereafter, no action was taken in pursuant to the said memorandum.

(b) In April 2005, the petitioner applied for appointment as General Manager in Tamil Nadu Mercantile Bank Ltd, a private sector bank and also got an appointment order on 11.5.2005. Thereafter, the petitioner applied for V.R.S. with the Canara Bank on 18.5.2005. The petitioner's action in seeking new employment had angered the respondent-management and in the result, resurrecting the earlier show cause notice, the respondent gave the letter dated 13.7.2005 stating that certain disciplinary proceedings were contemplated against the petitioner and therefore, it is not possible to relieve the petitioner from service.

(c) Thereafter, on 23.7.2005, a letter was issued in respect of some irregularities said to have been committed while the petitioner was working at Coimbatore. The petitioner immediately replied the same on 9.8.2005. The petitioner was not promoted as General Manager when eligibility came in June 2006. Thereafter, on 12.6.2006, a further memorandum was issued in respect of certain irregularities and immediately a reply was given by the petitioner on 27.6.2006. At that time, the petitioner was working as Deputy General Manager, New Delhi and was transferred from New Delhi to Bangalore in July 2006.

(d) Thereafter, on 30.12.2006, yet another memorandum was issued to the petitioner in respect of some irregularities said to have taken place while the petitioner was working at New Delhi from 23.12.2003 to 15.7.2006. The petitioner immediately replied on 16.1.2007. In the meanwhile, the petitioner had been suspended from service by an order dated 23.11.2006.

(e) The petitioner was due to retire from service on 31.5.2007 and therefore, the respondent passed an order on 19.5.2007 permitting the petitioner to retire from service and also stated that in terms of Regulation 20(3)(iii) of the Canara Bank (Officers) Service Regulations, 1979 [hereinafter referred to as "the Regulation"], disciplinary proceedings will continue as if he was in service of the bank until the proceedings are concluded and final orders are passed in respect thereof. It is further stated in the said proceedings that the petitioner will not receive and pay and

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allowance after the date of superannuation and he will not be entitled for any retirement benefits till the disciplinary proceedings are completed and final orders passed, except his own contribution to the provident fund. Thereafter, the respondent issued the impugned charge memo dated 28.6.2007 initiating disciplinary proceedings against him.

3. Aggrieved over the issuance of the said charge memo, the petitioner has come forward with the present Writ Petition on the following grounds:-

(i) After the date of superannuation of the petitioner, the respondent would not have any jurisdiction in law to initiate any disciplinary proceedings again him.

(ii) Rule 20(3)(iii) of the said Regulations will not apply to the facts and circumstances of the case, inasmuch as no disciplinary proceeding was initiated against the petitioner prior to the date of his retirement on superannuation and the respondent cannot proceed with the enquiry in pursuance of the said charge memo.

4. Counter affidavit has been filed by the respondent wherein it has been pointed out that disciplinary proceedings have been initiated against the petitioner in view of certain irregularities committed by the petitioner. The petitioner was also placed under suspension by proceedings dated 23.11.2006, having regard to the seriousness of the lapses/irregularities committed and also the huge financial risk involved. Since the petitioner reached the age of superannuation on 31.5.2007, the petitioner was permitted to retire by the competent authority vide proceedings dated 19.5.2007 invoking the provision of 20(3)(iii) of the said Regulations in order to continue the disciplinary proceedings against the petitioner as if he is still in service until the disciplinary proceedings are concluded and the final orders passed thereon. Thereafter, the petitioner had been issued with the charge memo dated 28.6.2007. Since the charge memo has been issued to the petitioner in pursuance of Regulation 20(3)(iii) of the said Regulations, the Writ Petition is liable to be dismissed.

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5. The crux of the counter affidavit is to the following effect:-

(a) In view of certain irregularities committed by the petitioner, the petitioner had been placed under suspension vide proceedings dated 23.11.2006 and thereafter by proceedings dated 19.5.2007, the petitioner had been permitted to retire from service, since the petitioner reached the age of superannuation on 31.5.2007. Regulation 20(3)(iii) of the said Regulations empowers the bank to continue the disciplinary proceedings even after the petitioner attained the age of superannuation and hence, the petitioner cannot raise a huge cry that after the petitioner attained the age of

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superannuation, the disciplinary proceedings cannot be continued against him.

(b) Since the petitioner had already been placed under suspension on 23.11.2006, it is deemed that the disciplinary proceedings have been initiated against the petitioner and hence, the claim of the petitioner that the disciplinary proceeding has been initiated against him subsequent to his attaining the age of superannuation on 31.5.2007 is absolutely incorrect.

6. Mr.Vijay Narayan, the learned senior counsel appearing for the petitioner and Mr.P.R.Raman, the learned counsel appearing for the respondent, placed their respective contentions basing on the affidavit and the counter affidavit of the petitioner and the respondent respectively.

7. The main contentions raised by Mr.Vijay Narayan, the learned senior counsel appearing for the petitioner, are as follows:-

(a) The petitioner attained the age of superannuation on 31.5.2007 and the respondent has no jurisdiction in law to initiate any disciplinary proceedings subsequent to the said date. Since the charge memo has been issued on 28.6.2007, after the petitioner retired from service on attaining the age of superannuation, the same is non est in law.

(b) Regulation 20(3)(iii) of the said Regulations will not apply to the facts and circumstances of the case, inasmuch as no disciplinary proceeding was initiated prior to the date of superannauation. In that view of the matter, the respondent has no power or right to initiate disciplinary proceedings after the date of his superannuation.

(c) It is a settled proposition that disciplinary proceedings can be initiated only by issuance of a charge memo. In the case on hand, the charge memo was not issued prior to the petitioner's attending the age of superannuation, but it was issued only later to his retirement, that is, it was issued only on 28.6.2007 and hence, the respondent cannot invoke the Regulation referred to above. Hence, the charge memo issued by the respondent is illegal and without any authority of law.

8. Per contra, Mr.P.R.Raman, the learned counsel appearing for the respondent, mainly contended as follows:-

(a) Since the petitioner had already been suspended by proceedings dated 23.11.2006, having regard to the seriousness of the lapses committed by him and also the huge financial risk involved, it is deemed that the disciplinary proceedings have already been initiated against the petitioner.

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(b) Regulation 20(3)(ii) of the said Regulations clearly states that an Officer against whom disciplinary proceedings has been initiated will cease to be in service on the date of superannuation, but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final orders are passed in respect thereof. In view of the said position made through the Regulation referred to above, there is no justification on the part of the petitioner to contend that the disciplinary proceeding has been initiated against the petitioner after he attained the age of superannuation on 31.5.2007.

9. On the backdrop of the matter in issue and also on the submission made by the learned senior counsel for the petitioner as well as the learned counsel for the respondent, now it has to be seen "whether the charge memo issued to the petitioner dated 28.6.2007, after the petitioner's attaining the age of superannuation on 31.5.2007 is liable to quashed or not."

10. The basic facts which are not in dispute are that the petitioner was placed under suspension by the proceedings of the respondent-bank dated 23.11.2006, that by the proceedings dated 19.5.2007 invoking Regulation 20(3)(iii) of the said Regulations, the competent authority has passed the order that the petitioner will cease to be in service of the bank on 31.5.2007 and the disciplinary proceedings will continue as if he is in service of the bank until the disciplinary proceedings are concluded and the final orders are passed in respect thereof, and that charge memo has been issued to the petitioner dated 28.6.2007 listing certain charges against him.

11. The case of the petitioner is that when once the petitioner has been allowed to retire on his attaining the age of superannuation on 31.5.2007, the respondent has no power or jurisdiction to issue the charge memo dated 28.6.2007. Regulation 20(3) of the said Regulations reads as follows:-

> "(i) An Officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of the competent authority and any notice or resignation given by such an Officer before or during the disciplinary proceedings shall not take effect unless it it is accepted by the Competent Authority.
>
> (ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this Regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the competent Authority.

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(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

12. By pointing out the said Regulation, Mr.Vijay Narayan, the learned senior counsel appearing for the petitioner, submitted that initiation of disciplinary proceeding means that charge memo should be pending before the petitioner attains the age of superannuation. In this connection, the learned senior counsel appearing for the petitioner, has drawn my attention to the decision reported in 2007 (4) S.C.C. 474 (U.C.O. BANK v. RAJINDER LAL CAPOOR) and submitted that the Honourable Apex Court has clearly held that the departmental proceeding is ordinarily said to be initiated only when a charge sheet is issued. The Apex Court in the above pronouncement has dealt with the Regulations in respect of U.C.O. Bank. The learned senior counsel for the petitioner submitted that the Regulations of the U.C.O. Bank and the Regulations of the Canara Bank, the respondent herein, are one and the same, which is not being disputed by the learned counsel appearing for the respondent. It is useful to refer paragraphs 17 to 23 of the said judgment which is reproduced as follows:-

"17. The High Court, therefore, may not correct in arriving at its opinion. However, as would appear from the discussions made hereinafter, initiation of the departmental proceedings itself, in our considered opinion, was wholly illegal and without jurisdiction.

18.The fact that charge-sheet was issued only on 13.11.98 was not in dispute. It also stands admitted that the respondent attained the age of superannuation on or before 1.11.1996. Disciplinary Proceedings admittedly were initiated against the respondent in terms of Regulation 20(3)(iii) of UCO Bank Officer Employees Services Regulations, 1979 which reads as under:

"The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the

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date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are competed and final order is passed thereon except his own contributions to CPF."

19. A bare perusal of the said provision would clearly show that by reason thereof a legal fiction has been created. We are not oblivious of the legal principle that a legal fiction must be given full effect but it is equally well-settled that the scope and ambit of a legal fiction should be confined to the object and purport for which the same has been created.

20.In DILIP S.DAHANUKAR v. KOTAK MAHINDRA CO LTD AND ANOTHER (2007 (5) SCALE 452), it was observed:

"46.Legal fiction, it is well-settled, must be construed having regard to the purport of the statue. [See Sadashiv Dada Patil vs. Purushottam Onkar Patil (D) By L/Rs (2006(10) SCALE 21); M.P.State Electricity Board v. Union of India & Others (2006(9)SCALE 194); Maruti Udyog Ltd vs. Ramlal & Others (2005 (2) S.C.C. 638); Barat Petroleum Corpn.Ltd v. P.Kesavan & Another (2004 (9) S.C.C. 772)]."

21. The aforementioned Regulation, however, could be invoked only when the Disciplinary Proceedings had clearly been initiated prior to the respondent's ceases to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder, i.e., continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a charge sheet is issued (See UNION OF INDIA, etc. v. K.V.JANKIRAMAN (AIR 1991 S.C. 2010). This aspect of the matter has also been considered by this court recently in COAL INDIA LIMITED AND OTHERS v. SAROJ KUMAR MISHRA (2007 (5) SCALE 724) wherein it was held that date of application of mind on the allegations levelled against an officer by the Competent Authority as a result whereof a charge sheet is issued would be the date on which the disciplinary proceedings said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation

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but involving a similar question of law in COAL INDIA LTD (supra) this Court held:

> "13.It is the case of the appellants that pursuant to or in furtherance of the complaint received by the vigilance department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a charge sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.
>
> 14. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was further more observed that:-

> 20. A departmental proceeding is ordinarily said to be initiated only when a charge sheet is issued." (See also Union of India v. Sangram Keshari Nayak (2007 (6) SCALE 348).
>
> 22. Respondent, therefore, having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not attracted. Consequently the chargesheet, the enquiry report and the orders of punishment passed by the Disciplinary Authority and the Appellate Authority must be held to be illegal and without jurisdiction.
>
> 23. An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law."

13. Per contra, Mr.P.R.Raman, the learned counsel appearing for the respondent, submitted that in the above referred case, the Honourable Apex Court was dealing with an employee who has been served with a show cause notice before retirement and not an order of suspension and hence, the present case on hand could be distinguished. But, I am unable to accept the said contention of the learned counsel for the respondent for the simple reason that Regulation 20(3)(ii) deals with not only show cause notice, but also deals with the case of suspension. Thus, it can be seen that before

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an employee of the bank could retire from service on attaining the age of superannuation, if show cause notice or an order of suspension has been passed, the same will not clothe the bank to proceed with the said employee after he attains the age of superannuation by issuing a charge memo subsequent to his retirement.

14. Yet another submission that has been made by the learned senior counsel appearing for the petitioner is that since the Honourable Apex court, while considering the other issues, had incidentally touched upon the Regulations in that case, the interpretation of the said Regulation was not the issue involved in the said case. Regulation 20(3)(ii) of the said Regulations, according to the learned counsel for the respondent, specifically states that the disciplinary proceedings shall be deemed to be pending against the employee if the employee is placed under suspension or any show cause notice has been issued. This issue never came for consideration before the Honourable Supreme Court in the above referred case, was the contention of the learned counsel appearing for the respondent.

15. The learned counsel appearing for the respondent in this connection relied on the judgment of the Honourable Apex court reported in 2006 (1) S.C.C. 275 (STATE OF ORISSA v. MD.ILLIYAS). The relevant passage relied on by the learned counsel for the respondent is found in paragraph 12 of the said judgment, which is extracted hereunder:-

> "When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the case concerned and there cannot be any straitjacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that prerequisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems

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disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. the enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See State of Orissa v. Sudhansu Sekhar Misra(AIR 1968 S.C. 647) and Union of India v. Dhanwanti Devi (1996 (6) S.C.C. 44)). A case is a precedent and binding for what is explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem (1901 A.C. 495) the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and case is only an authority for what it actually decides."

16. I am unable to accept the said contention of the learned counsel appearing for the respondent for more than one reason. While dealing with the Regulations of the U.C.O. Bank, more particularly, Regulation 20(3)(iii), the Honourable Apex Court has clearly laid down that the departmental proceeding is ordinarily said to be initiated only when a charge sheet is issued. In that particular case, the charge memo has been issued to the employee of the bank after he has attained the age of superannuation. The Honourable Apex Court dealt with the Regulations in extensio and came to the conclusion that unless and otherwise the charge memo has been issued to the concerned person before he could retire from service, the disciplinary proceeding cannot be proceeded with. Thus, the categorical pronouncement has been made by the Honourable Apex Court that the disciplinary proceeding is said to be initiated only when a charge sheet is issued. While so, to contend that the Honourable Apex Court did not touch the issue whether disciplinary proceeding could be initiated against a person after his retirement by issuing charge memo after the retirement of the concerned official, is totally unacceptable. It is also far fetching to contend that interpretation of Regulation was not the issue involved in the said case and that interpretation of Regulation 20(3)(ii) did not come up for consideration before the Honourable Apex Court.

17. Thus, summing up the entire issue revolved in the present case on hand, it is to be answered in the following manner. The charge memo issued to the petitioner dated 28.6.2007 subsequent to the petitioner's attaining the age of superannuation on 31.5.2007

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is totally not permissible. Hence, the issuance of the charge memo dated 28.6.2007 by the respondent is liable to be quashed and accordingly, quashed. The Writ Petition is therefore allowed. Consequently, the connected Miscellaneous Petitions are closed. However, there is no order as to costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

The Executive Director,
Canara Bank,
Industrial Relations Section,
Personnel Wing,
112, J.C. Road,
Bangalore 560 002.

1 cc to Mr.P.R. Raman, Advocate, Sr. 61963
1 cc to Mr.P. Nehru, Advocate, SR. 62043

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